

RETURN DATE: NOVEMBER 27, 2018 : SUPERIOR COURT
EDWARD A. HILBERT SR. AND DIANE HILBERT : J.D. OF NEW HAVEN
V. : AT NEW HAVEN
TOWN OF WALLINGFORD : OCTOBER 24, 2018

COMPLAINT

FIRST COUNT: NEGLIGENCE

1. At all times relevant herein, the plaintiffs Edward A. Hilbert Sr. and Diane Hilbert owned and were residents of their home at located at 45 Laurel Drive, Wallingford, Connecticut.

2. At all times relevant herein, the defendant Town of Wallingford was and continues to be a municipal corporation organized and existing under the laws of the State of Connecticut.

3. At all times relevant herein, the defendant Town of Wallingford, its officers, agents, servants and/or employees owned, operated, controlled, possessed and or maintained the Wallingford Water and Sewer Division which operated the sanitary sewer system serving 45 Laurel Drive in Wallingford, Connecticut.

4. The defendant Town agreed to provide access to and use of the sanitary sewer system to the plaintiffs' property and the plaintiffs agreed to and did pay the Town of Wallingford for the access to and use of the sewer system.

5. The defendant charged the plaintiffs for service and maintenance of the sanitary sewer system.

6. The defendant derived substantial revenue from its billing for access to and use of the municipal sanitary sewer system including revenue from the Hilberts and other ratepayers who were charged for said services.

7. The defendant derived a special corporate benefit and/or pecuniary profit from said revenues.

8. On or about October 29, 2016, the municipal sewer system malfunctioned and deposited raw sewage into the Hilberts' home and finished basement located at 45 Laurel Drive in Wallingford.

9. Upon best information and belief, plant root blockages caused or contributed to said system malfunction.

10. On October 29, 2016, the Hilberts returned home to find an overwhelming noxious odor and sewage entering their basement bathroom/family room.

11. Mr. Hilbert immediately reported the sewage backup into their home to the Town of Wallingford Water and Sewer Division.

12. Town agents, servants and/or employees investigated the Hilberts' complaint, determined the same was accurate, and found that the Town's main sanitary sewer line, not the lateral line on the Hilberts' property, was blocked.

13. Said agents, servants and/or employees further determined that said main line blockage caused backup from a number of customers' properties to fill the Hilberts' basement because the backup from the main sewer sanitary line backed up into the lateral line serving the Hilberts' property, and then escaped from the line into the Hilberts' basement.

14. Said sewer system malfunction was foreseeable and could have been prevented had the defendant, its agents, servants and/or employees engaged in proper inspection and maintenance of the sewer lines and areas surrounding them.

15. The plaintiffs suffered injury and damages to their health and property caused by said event and the raw sewage deposited into their home.

16. The plaintiffs' damages were caused by the negligent and careless acts and omissions of the defendant in one or more of the following ways, in that it:

- a. Improperly designed the sewer system main and lateral lines by allowing branches to encroach into the lines causing a sewage backup to enter the Hilberts' home;
- b. Improperly maintained the sewer system main and lateral lines by allowing branches to encroach into the lines causing a sewage backup to enter the Hilberts' home;
- c. Created a dangerous and defective condition with regard to the sewage system by failing to design and or install plumbing devices such as valves to prevent backflow of sewage into lateral lines and/or customers' residences;
- d. Allowed a dangerous and defective condition to exist in the sewage system due to the lack of plumbing devices such as valves to prevent backflow into lateral lines and/or customers' residences;
- e. Knew or should have known that the failure to correct the design of the sewer system and its flow patterns created an ongoing dangerous condition, yet failed to take adequate measures to remedy the condition;
- f. Knew or should have known that the failure to maintain the sewer system and its flow patterns created an ongoing dangerous condition, yet failed to take adequate measures to remedy the condition;

- g. Failed to adequately inspect the sewage system lines, mains and/or laterals in the area near the Hilberts' home to discover, remove, and/or prevent the existence of plant root blockages;
- h. Failed to provide auxiliary or supplementary systems that would remedy the sewage backup when it foreseeably occurred and/or alert the sewer division of reduced flow due to partial blockage of a main or lateral branch of the sewer system in an area near the Hilberts' home so as to allow prompt maintenance of the sewer system and prevent backup of sewage into the Hilberts' home;
- i. Failed to warn the plaintiffs of the inadequate sewer system design that allowed backup of sewage into their property so as to allow the plaintiffs to take precautions to prevent backup into their property;
- j. Failed to warn the plaintiffs of the inadequate maintenance that allowed backup of sewage into their property so as to allow the plaintiffs to take precautions to prevent backup into their property;
- k. Failed to take reasonably expedited steps to remedy said backflow situation at the Hilberts' home, thereby increasing the damages, injuries and harm.

17. As result of the negligence and carelessness of the defendant, its agents, officers, servants and/or employees, the plaintiffs suffered harm to their property and persons.

18. The plaintiffs incurred expense to clean the sewage from their home, and to repair and/or replace structural features such as paneling and flooring, and items damaged by contamination.

19. The plaintiffs' personal property and fixtures were damaged, contaminated, ruined and destroyed by the sewage backup into their home.

20. The value of the plaintiffs' real property and home is diminished by the sewage backup into their home.

21. The plaintiffs' mental and physical wellbeing was harmed due to the sewage backup into their home, their personal exposure to sewage, and contamination of the structure, fixtures and their personal property.

22. The plaintiffs incurred expense to remove, clean, replace, and repair damage to their personal property, fixtures and structure. The value of the property has been decreased due to the above-described sewage exposure

23. The plaintiffs incurred and will incur medical expenses to diagnose and treat medical conditions caused and/or aggravated by the sewage backup into their home.

SECOND COUNT: DETRIMENTAL RELIANCE

1-23. Paragraphs 1 through 23 of the First Count are hereby incorporated into and made paragraphs 1 through 23 of this the Second Count as if fully set forth herein.

24. Subsequent to the Hilberts' report of the sewage in their basement, the Town, through its agents, servants and/or employees, discussed the line blockage with the Hilberts.

25. Said agents, servants and/or employees spoke via cell phone in Edward Hilbert's presence with supervisors concerning the sewage in the Hilberts' home and then specifically instructed, directed and encouraged the Hilberts to contract with ServPro, a cleaning company used by the Town, to clean/remediate the sewage situation and the structural elements, fixtures, and belongings damaged and effected by the presence of sewage.

26. The Hilberts were immediately concerned with cleanup and repair costs and communicated their stress on this issue to the agents, servants and/or employees of the Town to whom they spoke.

27. Said agents, servants and/or employees assured the Hilberts of the Town's responsibility for their damages.

28. The Hilberts relied on the apparent authority of said agents, servants and/or employees to accept responsibility on the part of the Town and to direct the Hilberts on how to proceed.

29. The Town and its agents, servants and/or employees knew, or should have known, that the Hilberts would rely on said representations.

30. Relying upon such instructions and interaction, the Hilberts did contract with ServPro to clean and repair the damage caused by the sewage.

31. The Hilberts thus incurred liability for ServPro's charges, upon representations by defendant's agents, servants and/or employees that said costs would be covered by the Town.

32. After ServPro cleaned and repaired the damage caused by the sewage, the defendant sent its liability insurance claims adjuster to examine the Hilberts' property and to inspect ServPro's cleanup and repairs, to review ServPro's bills, and to investigate the cause of the sewage backup into the Hilberts' home.

33. The defendant Town's liability insurance claims adjuster determined that the sewage backup did occur in the defendant's sewer line and not the lateral sewer line on Hilberts' property.

34. The defendant Town's liability insurance claims adjuster determined that the ServPro cleaning, removal, and repair bills were reasonable and necessitated by the sewage backup.

35. Thereafter, the defendant Town refused to pay ServPro and/or the Hilberts for the reasonable costs of cleaning and remediating and repairing the damage caused by the presence of sewage in their home.

36. The Hilberts relied upon the defendant's representations in hiring ServPro and incurring ServPro's charges.

37. The Hilberts' property was liened in connection with unpaid bills for cleanup, remediation and construction, resulting in extreme mental distress and financial hardship.

38. The defendant's refusal to pay for cleanup and remediation was willful and wanton and has caused, and continues to cause, severe emotional distress and damage to the Hilberts.

THIRD COUNT: BREACH OF IMPLIED COVENANT GOOD FAITH AND FAIR DEALING

1-38. Paragraphs 1 through 38 of the Second Count are hereby incorporated into and made paragraphs 1 through 38 of this, the Third Count as if fully set forth herein.

39. The defendant, through its agents, servants and/or employees entered into an oral contract with the plaintiffs as to payment of costs for cleaning, remediation, construction and replacement of personal property.

40. Based on representations of the Town's agents, servants and/or employees as aforesaid, the plaintiffs reasonably expected that all costs they incurred would be covered.

41. The defendant's refusal to pay the plaintiffs' costs for cleaning, remediation, construction and replacement of personal property impeded the plaintiffs' right to receive benefits they reasonably expected to receive.

42. In denying responsibility and refusing to pay for the plaintiffs' losses, the defendant acted in bad faith.

FOURTH COUNT: NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

1-42. Paragraphs 1 through 42 of the Third Count are hereby incorporated into and made paragraphs 1 through 42 of this the Fourth Count are if fully set forth herein.

43. The conduct of the defendant and its agents, servants and/or employees in both allowing/causing conditions which resulted in sewage entering the plaintiffs' home and in later denying responsibility for cleanup/remediation and refusing to pay for losses created an unreasonable risk of causing emotional distress to the plaintiffs.

44. The emotional distress suffered by the Hilberts was foreseeable under the circumstances.


45. The emotional distress suffered, including malaise, sleeplessness, anxiety, and repulsion and disgust was severe enough to result in physical and mental illness, unwellness or bodily harm.

46. The defendant Town's conduct as described above was the cause of the plaintiffs' distress.

WHEREFORE, the plaintiffs claim:

1. Money damages within the jurisdiction of the Superior Court;
2. Costs of this action;
3. Punitive damages;
4. Attorney's fees;
5. Other relief as this Court deems just and equitable.

THE PLAINTIFFS, EDWARD A. HILBERT SR.
AND DIANE HILBERT

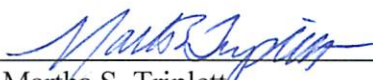
By 
Martha S. Triplett
Delaney & Triplett, P.C.
Their Attorney

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AD DAMNUM

The amount, legal interest or property in demand is more than FIFTEEN THOUSAND DOLLARS (\$15,000.00), exclusive of interest and costs.

THE PLAINTIFFS, EDWARD A. HILBERT SR.
AND DIANE HILBERT

By _____
Martha S. Triplett
Delaney & Triplett, P.C.
Their Attorney